

HOUSE BILL No. 1767

DIGEST OF HB1767 (Updated March 1, 1999 5:44 pm - DI 100)

Citations Affected: IC 24-5.

Synopsis: No sales solicitation listing. Requires the consumer protection division of the office of the attorney general to publish a listing of telephone numbers of persons who do not wish to be solicited by telephone. Establishes a \$10 initial listing charge for a person who wishes to be included in the listing, and a \$5 annual renewal fee. Prohibits a telephone solicitor from calling a number that appears in the quarterly listing published by the division. Requires a telephone solicitor who makes an unsolicited telephone call to state the solicitor's name and business immediately upon telephone contact with a consumer. Establishes other requirements that a telephone solicitor must meet before a contract made under a telephone sales call is valid. Prohibits the use of an automated dialing system or a recorded message by a telephone solicitor except under specific circumstances. Establishes penalties for violations. Requires the consumer protection
(Continued next page)

Effective: July 1, 1999.

Sturtz, Kruzan, Stevenson

January 26, 1999, read first time and referred to Committee on Commerce and Economic Development.
February 8, 1999, amended, reported — Do Pass.
March 1, 1999, read second time, amended, ordered engrossed.

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division of the office of the attorney general to notify Indiana residents of the rights and duties created by these provisions.

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Reprinted
March 2, 1999

First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

HOUSE BILL No. 1767

A BILL FOR AN ACT to amend the Indiana Code concerning trade regulations; consumer sales and credit.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 24-5-12.5 IS ADDED TO THE INDIANA CODE
2 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 1999]:

4 **Chapter 12.5. No Sales Solicitation List**

5 **Sec. 1. As used in this chapter, "consumer" means an actual or**
6 **a prospective purchaser, lessee, or recipient of consumer goods or**
7 **services.**

8 **Sec. 2. As used in this chapter, "consumer goods or services"**
9 **means real property or tangible or intangible personal property**
10 **that is normally used for personal, family, or household purposes,**
11 **including:**

12 (1) property intended to be attached to or installed in real
13 property without regard to whether it is attached or installed;
14 (2) cemetery lots;

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(3) timeshare estates; and

(4) services related to the property.

Sec. 3. As used in this chapter, "division" means the consumer protection division of the office of the attorney general.

Sec. 4. As used in this chapter, "doing business in this state" refers to a business that conducts telephonic sales calls from a location in Indiana or from other states or nations to consumers located in Indiana.

Sec. 5. As used in this chapter, "listing" refers to the no sales solicitation listing published by the division that lists the names of persons who do not wish to receive unsolicited telephonic sales calls.

Sec. 6. As used in this chapter, "telephonic sales call" means a call made by a telephone solicitor to a consumer for the purpose of:

(1) soliciting a sale of consumer goods or services;

(2) soliciting an extension of credit for consumer goods or services; or

(3) obtaining information that will or may be used for the direct solicitation of a sale of consumer goods or services or an extension of credit for such purposes.

Sec. 7. As used in this chapter, "telephone solicitor" means an individual, firm, organization, partnership, association, or corporation, including affiliates and subsidiaries, doing business in this state, except those subject to 47 CFR parts 64 and 68, that makes or causes to be made a telephonic sales call, including calls made by use of automated dialing or recorded message devices.

Sec. 8. As used in this chapter, "unsolicited telephonic sales call" means a telephonic sales call other than a call made:

(1) in response to an express request of the person called;

(2) primarily in connection with an existing debt or contract for which payment or performance has not been completed at the time of the call;

(3) to a person with whom the telephone solicitor has a prior or existing business relationship;

(4) by a newspaper publisher or the publisher's agent or employee in connection with that business;

(5) on behalf of a charitable organization; or

(6) on behalf of a political candidate or political party.

Sec. 9. (a) The division shall publish a quarterly listing of telephone numbers of persons who request not to be solicited by telephone.

(b) The division shall place the telephone number of a



1 residential, mobile, or telephonic paging device telephone
2 subscriber on the listing if:

- 3 (1) the subscriber notifies the division according to a
4 procedure established by the division; and
5 (2) the division receives a ten dollar (\$10) initial listing charge
6 for each telephone number listed.

7 The listing must be renewed by the division annually for each
8 telephone number upon receipt of a renewal notice and a five
9 dollar (\$5) renewal fee for each telephone number.

10 (c) The division shall update the listing upon receipt of initial
11 consumer subscriptions or renewals.

12 (d) The division shall, for a fee, provide the listing to telephone
13 solicitors upon the telephone solicitor's request.

14 (e) All fees imposed under this chapter must be deposited in the
15 consumer protection division solicitation fund established by
16 section 10 of this chapter.

17 Sec. 10. (a) The consumer protection division solicitation fund
18 is established for the purpose of the administration of this chapter.

19 (b) The fund shall be administered by the consumer protection
20 division of the office of the attorney general.

21 (c) Money in the fund at the end of a state fiscal year does not
22 revert to the state general fund.

23 Sec. 11. (a) A telephone solicitor may not make or cause to be
24 made an unsolicited telephonic sales call to a:

- 25 (1) residential;
26 (2) mobile; or
27 (3) telephonic paging device;

28 telephone number if the number for that telephone appears in the
29 most current quarterly listing published by the division.

30 (b) A telephone solicitor who makes an unsolicited telephonic
31 sales call to a residential, mobile, or telephonic paging device
32 telephone number shall disclose the:

- 33 (1) solicitor's true first and last name; and
34 (2) name of the business on whose behalf the telephone
35 solicitor is soliciting;

36 immediately upon making contact by telephone with the person
37 who is the subject of the telephone solicitation.

38 (c) A telephone solicitor or person who obtains any consumer
39 information that includes:

- 40 (1) residential;
41 (2) mobile; or
42 (3) telephonic paging device;



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1 telephone numbers, except directory assistance and telephone
 2 directories sold by telephone companies and organizations exempt
 3 under 26 U.S.C. 501(c)(3) or (6) of the Internal Revenue Code, shall
 4 exclude the numbers that appear on the division's most current
 5 listing.

6 (d) This section does not apply to a person licensed under
 7 IC 25-34.1 who calls an actual or prospective seller or lessor of
 8 property when the call is made in response to a yard sign or other
 9 form of advertisement placed by the seller or lessor.

10 Sec. 12. (a) A contract made under a telephonic sales call is not
 11 valid and enforceable against a consumer unless the contract
 12 complies with this section.

13 (b) A contract made under a telephonic sales call:

- 14 (1) must be reduced to writing and signed by the consumer;
- 15 (2) must comply with all other applicable laws and rules;
- 16 (3) must match the description of goods or services as
- 17 principally used in the telephone solicitations;
- 18 (4) must contain the name, address, and telephone number of
- 19 the seller, the total price of the contract, and a detailed
- 20 description of the goods or services being sold;
- 21 (5) must contain, in bold, conspicuous type immediately
- 22 preceding the signature the words "you are not obligated to
- 23 pay any money unless you sign this contract and return it to
- 24 the seller"; and
- 25 (6) may not exclude from its terms any oral or written
- 26 representations made by the telephone solicitor to the
- 27 consumer in connection with the transaction.

28 (c) This section does not apply to:

- 29 (1) a contractual sale regulated under other sections of the
- 30 Indiana Code;
- 31 (2) a sale of cable television services to a franchised cable
- 32 television operator's existing subscribers within that cable
- 33 television operator's franchise area;
- 34 (3) a sale in which no prior payment is made to a merchant
- 35 and an invoice accompanies the goods or services allowing a
- 36 consumer seven (7) days to cancel or return without
- 37 obligation for payment;
- 38 (4) a contractual agreement in which payment is required and
- 39 allows the consumer at least ten (10) days to cancel the
- 40 contract and receive a full refund of the payment; or
- 41 (5) a sale regulated by 170 IAC 7-1.1-19.

42 Sec. 13. (a) A merchant who engages a telephone solicitor to



1 make or cause to be made a telephonic sales call may not:

2 (1) make or submit a charge to a consumer's credit card
3 account; or

4 (2) make or cause to be made any electronic transfer of funds;
5 until the merchant receives from the consumer a copy of the
6 contract, signed by the purchaser, that complies with this chapter.

7 (b) A merchant who conducts a credit card account transaction
8 under this chapter is subject to IC 35-43-5-4.

9 (c) This section does not apply to a transaction:

10 (1) made in accordance with prior negotiations in the course
11 of a visit by a consumer to a merchant that operates a retail
12 business establishment that has a fixed permanent location
13 and where consumer goods are displayed or offered for sale
14 on a continuing basis;

15 (2) in which a consumer may:

16 (A) obtain a full refund for the return of undamaged and
17 unused goods; or

18 (B) within seven (7) days after receipt of merchandise by
19 a consumer, give a cancellation of services notice to a seller
20 and return the merchandise, and the seller will process the
21 refund within thirty (30) days of receipt of the returned
22 merchandise;

23 (3) in which a consumer purchases goods or services under a
24 television, radio, or print advertisement or a sample,
25 brochure, or catalog of a merchant that contains:

26 (A) the name, address, and telephone number of the
27 merchant;

28 (B) a description of the goods or services being sold; and

29 (C) limitations or restrictions that apply to the offer; or

30 (4) in which a merchant is a bona fide charitable organization
31 or a newspaper.

32 Sec. 14. (a) A telephone solicitor may not make or knowingly
33 allow a telephonic sales call to be made if the call involves:

34 (1) an automated system for the selection or dialing of
35 telephone numbers; or

36 (2) the playing of a recorded message when a connection is
37 completed to a number called.

38 (b) This section does not prohibit the use of an automated
39 telephone dialing system with live messages if:

40 (1) a call is made or message is given in response to a call
41 initiated by a person to whom the automatic call or live
42 message is directed;



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(2) a telephone number selected for automatic dialing has been screened to exclude a telephone subscriber who is included on the division's most recent listing or an unlisted telephone number; or

(3) the call concerns goods or services that have been previously ordered or purchased.

(c) This section does not relieve a person from complying with IC 24-5-14.

Sec. 15. The division shall investigate complaints received concerning violations of this chapter.

Sec. 16. The division shall notify Indiana residents of the rights and duties created by this chapter.

Sec. 17. In addition to any other remedies or penalties under this chapter, a person who is damaged by a telephone solicitor's failure to comply with this chapter or by a telephone solicitor's breach of contract may bring an action for recovery of the person's actual damages, including court costs and attorney's fees.

Sec. 18. Upon petition by any person that a telephone solicitor has failed to comply with this chapter, the circuit or superior court of the county of residence of the petitioner may enjoin the telephone solicitor from further violations.

Sec. 19. A telephone solicitor who fails to comply with sections 11 through 14 of this chapter commits a Class D felony.

Sec. 20. A telephone solicitor who fails to comply with any provision of this chapter commits a deceptive act that is actionable by the attorney general under IC 24-5-0.5-4(c) and is subject to the penalties set forth in IC 24-5-0.5. An action by the attorney general for a violation of this chapter may be brought in the circuit or superior court of Marion County.

Sec. 21. (a) If a telephone solicitor makes a telephonic sales call to a prospective customer outside the course of dealing (as described in IC 26-1-1-205), whether personally, through salespersons, or through the use of an automated dialing and answering device, the telephone solicitor may not knowingly or intentionally block or attempt to block the display of the telephone solicitor's:

(1) telephone number; or

(2) identity;

by a caller ID service (as defined by IC 8-1-2.9-1) when attempting to initiate a telephone conversation for the purpose of making a solicitation to a prospective customer.

(b) A telephone solicitor who knowingly or intentionally violates



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1 **this section commits a Class B misdemeanor. However, the offense**
2 **is a Class A misdemeanor if the telephone solicitor has a prior**
3 **unrelated conviction under this section.**

4 **Sec. 22. This chapter does not relieve a person from complying**
5 **with any other statute or ordinance.**

6 **Sec. 23. The division may adopt rules under IC 4-22-2 to**
7 **implement this chapter.**

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